

Community resources

[Follow us on Twitter](#) [Check our Reddit](#) [Twitter this](#) [Digg this page](#) [Contact us on IRC](#)

courage is contagious

Viewing cable 07SANJOSE655, CAFTA: REFERENDUM CONCERNS, BUT COALITION

If you are new to these pages, please read an introduction on the [structure of a cable](#) as well as how to [discuss them](#) with others. See also the [FAQs](#)

Understanding cables

Every cable message consists of three parts:

- The top box shows each cables unique reference number, when and by whom it originally was sent, and what its initial classification was.
- The middle box contains the header information that is associated with the cable. It includes information about the receiver(s) as well as a general subject.
- The bottom box presents the body of the cable. The opening can contain a more specific subject, references to other cables ([browse by origin](#) to find them) or additional comment. This is followed by the main contents of the cable: a summary, a collection of specific topics and a comment section.

To understand the justification used for the classification of each cable, please use this [WikiSource](#) article as reference.

Discussing cables

If you find meaningful or important information in a cable, please link directly to its unique reference number. Linking to a specific paragraph in the body of a cable is also possible by copying the appropriate link (to be found at the paragraph symbol). Please mark messages for social networking services like Twitter with the hash tags **#cablegate** and a hash containing the reference ID e.g. **#07SANJOSE655**.

Reference ID	Created	Released	Classification	Origin
07SANJOSE655	2007-04-04 20:36	2011-08-30 01:44	CONFIDENTIAL	Embassy San Jose

Appears in these articles:

<http://www.nacion.com/2011-03-02/Investigacion.aspx>

VZCZCXYZ0001
OO RUEHWEB

DE RUEHSJ #0655/01 0942036
ZNY CCCCC ZZH
O 042036Z APR 07 ZFF4
FM AMEMBASSY SAN JOSE
TO RUEHC/SECSTATE WASHDC IMMEDIATE 7704
INFO RUEHZA/WHA CENTRAL AMERICAN COLLECTIVE PRIORITY

C O N F I D E N T I A L SAN JOSE 000655

SIPDIS

SENSITIVE
SIPDIS

DEPARTMENT FOR WHA/CEN, WHA/EPSC AND EB; PASS TO USTR
AMALITO

E.O. 12958: DECL: 04/04/2017
TAGS: [PGOV](#) [ETRD](#) [PREL](#) [PINR](#) [CS](#)
SUBJECT: CAFTA: REFERENDUM CONCERNS, BUT COALITION
COOPERATING; LEGISLATION MOVING

REF: A. A) SAN JOSE 625
[1](#)B. B) SAN JOSE 552

¶1. (C) SUMMARY: Although optimistic that CAFTA can be ratified by August-September, the Arias administration is now concerned about the prospect of a CAFTA referendum. Responding to a petition filed by CAFTA opponent, renegade PLN member, former legislator and presidential candidate Jose Miguel Corrales, the Supreme Electoral Tribunal (TSE) is to rule on the issue by April 15. GOCR officials believe the TSE may be inclined to agree to a referendum, but they are

SIPDIS

reasonably confident of winning the referendum, if it comes to that. The cost and time involved will be challenges, however; no such referendum has ever been held in Costa Rica.

Clothed as a &benign8 way to resolve the CAFTA issue in public once and for all, the referendum could become one more delaying gambit by the opposition. President Oscar Arias is reported to be adamantly opposed, but other cabinet members are contemplating strategy, if a referendum proves inevitable. In the good news department, Arias,s coalition is cooperating again, and key CAFTA-related legislation continues to move ahead in the National Assembly. END SUMMARY.

TEMPERED OPTIMISM. . .

¶2. (C) On March 29, the Ambassador called on Minister of Government Rodrigo Arias, who was easing back into a work schedule after hip replacement surgery. Looking fit and sounding confident, Arias was optimistic that the GOCR would be able to ratify CAFTA and approve implementing legislation as &a package8 in August-September, the same prediction he has made recently in public. (The next extraordinary legislative session begins in August, when the executive would have more control over the agenda.) The Minister dismissed the &jump-start8 proposal of ML party leader Otto Guevara) to take CAFTA to a no-notice, simple yes or no plenary vote in mid-April) as going too far, too soon. (NOTE: Guevara discussed this idea with Department interlocutors during his Washington visit last month.) Although technically constitutional, such a move would fly against years of legal tradition permitting legislative debate of interpretative clauses when considering international agreements. The Supreme Court,s activist constitutional chamber (Sala IV) would probably object (Ref A).

¶3. (SBU) According to Arias, the GOCR will thus maintain its current course on CAFTA:

-- Correct the procedural flaws in proposed fast track legislation by mid-April (as demanded by the Sala IV on March 5), while moving ahead on key legislation in committee;

-- Once fast track legislation is ready (probably in late-May or early-June, after one last Sala IV review, prompted by another likely opposition challenge), take CAFTA to the plenary for limited debate; and

-- In the meantime, apply existing fast track rules to CAFTA-related legislation as required. (NOTE: Existing fast track rules need no modification for use with regular legislation. The modification is required to use fast track with treaties.)

. . . BUT REFERENDUM CONCERNS

¶4. (C) However, Minister Arias said the GOCR has concerns, which it is keeping private, about a possible CAFTA referendum. In a separate meeting with the Ambassador on March 30, First VP and Minister of Justice Laura Chinchilla echoed those concerns. Chinchilla explained that Jose Miguel

Corrales (former PLN legislator and presidential contender and strong CAFTA critic) had been pushing the referendum idea since 2006. Because he helped Chinchilla draft the Referendum Law when they were both legislators, he is considered an expert on the subject. (NOTE: In October 2006, the TSE rejected a petition by Corrales and others for a non-binding CAFTA referendum, arguing that non-binding polls were not permitting under the Referendum Law. Corrales and company then pressed for a binding referendum. Their petition reached the Sala IV, but was bounced back to the TSE

for action on February 16. END NOTE.) According to Ministers Arias and Chinchilla, the TSE must issue a decision in this latest challenge within 60 days, i.e., by April 15.

15. (C) Chinchilla said President Arias was adamantly opposed to the referendum idea, but the GOCR would have to proceed very carefully if the TSE decided in favor. She and Minister Arias both described the outcome as uncertain. Of the three TSE members, two had some doubts that a referendum could

SIPDIS

apply to any legislation with a fiscal aspect (such as a free trade agreement dealing with tariffs and duties), but they were leaning pro-referendum nonetheless. The views of the third member) currently a substitute) were unknown. Minister Arias was confident that TSE president Luis Antonio Sobrado, whom he described as &young and forceful,8 ultimately would make the right decision) to reject a CAFTA referendum because of the restriction on referenda with fiscal implications. Even if the TSE supported a CAFTA referendum, Arias believed that regular legislative work could continue while the referendum was prepared.

16. (C) VP Chinchilla did not sound as confident on either issue. She told the Ambassador that the rectors of the four leading state universities may turn the heat up after Holy Week by calling in public for the referendum, in exchange for a pledge to tone down CAFTA opposition on campus and in the streets. For Costa Ricans in and out of politics, (as well as the TSE members), this eminently &Tico8 call to consensus might be too powerful to ignore, in Chinchilla,s opinion.

17. (C) If the TSE ruled in favor of the referendum, the GOCR could still take the initiative, according to Chinchilla. To enact the referendum, the executive could submit appropriate legislation to the Assembly. Because the referendum procedure calls for an up or down, simple majority vote in the plenary, without Sala IV review (as is the case with normal legislation), Chinchilla said the GOCR might bundle some CAFTA-related legislation with the referendum bill. The opposition would then face a dilemma: either oppose the referendum to block the CAFTA-related bills, or support the referendum, but approve the CAFTA legislation at the same time. The Assembly itself could also call for a referendum, Chinchilla explained, but 38 votes would be required to pass the relevant legislation. The Arias administration,s working majority would block this route, if the opposition tried it.

18. (C) Chinchilla was more concerned about the third route to a referendum: a public petition. Only five percent of the national voter registry would be needed, approximately 150,000 signatures. The opposition could collect those, and delay long enough to submit their petition so as to jeopardize the CAFTA timetable. Ministers Arias and Chinchilla both believe the GOCR could win a CAFTA referendum, but the VP acknowledged that cost and campaigning would be challenges. The GOCR would not be permitted to campaign, for example, relying on the private sector to carry the day against an already well-organized and well-funded CAFTA opposition. The first test of the Costa Rican referendum law and the only such vote on CAFTA no doubt would attract support from international anti-globalization organizations and from Venezuela, as well. Meeting the minimal 40 percent turnout rate for the referendum to be considered valid is another challenge, Chinchilla added.

COALITION IS COOPERATING, AGAIN

¶9. (C) Meanwhile, despite some mid-March turbulence, the GOCR,s pro-CAFTA coalition seems to be working smoothly again. Problematic ML legislator Mario Quiros (Ref B) is not only supporting the GOCR,s position on correcting the procedural flaws in the fast track legislation, but he is writing the majority committee report, according to ML president Otto Guevara. Energized from his Washington visit, Guevara agreed with the Ambassador in a meeting on March 27 that President Arias should designate one minister to run the CAFTA effort full-time. Minister of Foreign Trade Marco Vinicio Ruiz is fully occupied with CAFTA substance and negotiations with USTR. Minister w/o Portfolio Marco Vargas thus would be a logical selection, Guevara said.

LEGISLATION MOVING FORWARD

¶10. (SBU) In the legislature, three of 13 bills necessary to harmonize national law with CAFTA have reached the floor and

are pending plenary action: dealership regulation, ratification of the Budapest IPR treaty and ratification of the trademark treaty. Committee deliberations on six more bills are to be completed by the last week in April: opening the telecom market, strengthening public sector entities, opening the insurance market, a bill dealing with miscellaneous patent and trademark issues, a bill dealing with IPR enforcement issues, and legislation dealing with the protection of new plant species. Before the Holy Week recess, key pro-CAFTA legislators were stressing in public the need to keep moving and the urgency of mounting a pro-CAFTA offensive with the private sector after Easter.

COMMENT:

¶11. (SBU) A referendum would further cloud an already messy CAFTA picture, and would mean more delays in a much-delayed timetable. It would also be a tempting solution for tired legislators, looking for a way to share (or pass off) the CAFTA burden. We hope the GOCR,s concerns are fueled more by prudence than alarm. From our reading of related jurisprudence (such as the Procuraduria,s decision of April ¶24. 2006), it appears that a free trade agreement which regulates tariffs cannot be approved by a referendum, but we are not the local experts. The details of referendum procedures are not clear to us, either, nor is the Sala IV,s potential role, e.g., could referendum results or procedures be challenged in the Supreme Court? Even without a referendum, the CAFTA end-game here will not be elegant, and the timetable continues to slip. Instead of a clean ratification-implementation sequence, we can expect to see motion at varying speeds and times on both tracks, using a complex, multi-layered strategy including special and normal legislative committees, as well as fast track and normal legislative rules. As one long-time political observer and pollster told us, in politics or in soccer, Ticos play their best when they are under the most pressure, &when their noses are almost under water.8

WEITZENKORN